

Supreme Court, U. S.
FILED

DEC 17 1975

MICHAEL ROBAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-602

CABOT CORPORATION, *Appellant*,

v.

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA and
TRUE TEMPER CORPORATION, *Appellees*.

On Appeal from the West Virginia Supreme Court of Appeals

**APPELLANT'S REPLY MEMORANDUM TO
MOTION TO DISMISS OR AFFIRM**

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The Appellee, Public Service Commission ("Commission"), in its motion to dismiss or affirm in this case, cited only *Federal Power Commission v. United Gas Pipe Line Company*, 386 U.S. 237 (1967), as "authority and precedent for a regulatory Commission to reduce a company's tax allowance in its cost of service to the point where the effective rate is less than the statutory rate in cases where consolidated returns are filed or

where the actual tax paid the Federal Government is reduced through the use of various tax credits." Appellees Motion at 4 (emphasis added).

This Court in *United Gas Pipe Line Company* did not establish "precedent and authority" for, or in anyway concern itself with, the above italicized proposition. Instead, *United Gas Pipe Line Company* stated only that the FPC "could properly disallow the hypothetical tax expense [based on the amount payable if all the companies within the affiliated group had filed a separate federal income tax return] and hold that rates based on such an unreal cost of service would not be just and reasonable." That is not the issue in Cabot Corporation's ("Cabot's") appeal.

Appellant considered and rejected citation to *United Gas Pipe Line Company, supra*, because it is not relevant to the legislation (the Commission's order) here complained of.

As to the vacuous contention made by the Commission in its motion to dismiss that Cabot should have set up a subsidiary corporation for its West Virginia utility operations to file a separate federal tax return, this theory was not considered by the Commission and is raised for the first time in this Court. There is no way under existing federal tax law that an affiliated group filing a consolidated return can break out one affiliate for purposes of that affiliate filing a separate return. 26 U.S.C. § 1501; Treas. Reg. § 1.1502-75 (1966); Rev. Rul. 56-559, 1956-2 Cum. Bul. 595.

For the foregoing reasons and those set forth in Cabot's Jurisdictional Statement filed with this Court in this matter, the need for full plenary consideration

of this appeal and for reversal of the Commission's order is indisputable.

Respectfully submitted,

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December 15, 1975